SUPREME COURT, U. S.

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FILED
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1969

No. 501

WILLIAM WALTZ HOWELL,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

Petition for a Writ of Certiorari to the Court of Appeals of Maryland

MORGAN L. AMAIMO,
511 North Charles Street,
Baltimore, Maryland 21201,
Counsel for Petitioner.

The Paul M. Harrod Company, Towson, Maryland 21204

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Arguments:

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II. The State of Maryland violated the Fifth Amendment of The Constitution of the United States when it permitted officers of the law to use follow up questioning and methods of interrogation against the accused-petitioner who warned of wanting to remain silent while in custody and thereby deprived petitioner of fundamental Constitutional rights reserved

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for persons by that Federal document and further safeguarded by the Judicial integrity of this Court in Miranda, from being "compelled in a criminal case" to be a "witness against himself" 10

III. The State of Maryland violated the Sixth Amendment of The Constitution of the United States by allowing officers of the law to question and interrogate the petitioner in violation of his Constitutional rights "to have the assistance of counsel for his defense" when he chose not to speak, but to remain silent while in custody and being subjected to interrogation after the warning 12

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IN THE

Supreme Court of the United States

October Term, 1969

No. _____

WILLIAM WALTZ HOWELL,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

Petition for a Writ of Certiorari to the Court of Appeals of Maryland

To the Honorable the Chief Justice and the Justices of the Supreme Court of the United States:

William Waltz Howell petitions this Honorable Court For a Writ of Certiorari to review the Judgment of The Court of Appeals of Maryland entered in the case of *William Waltz Howell v. State of Maryland*, denying Petition For a Writ of Certiorari on the first day of April, 1969.

Opinions and Orders in Courts Below.

The Opinion and judgment, "per curiam" of the Court of Special Appeals of Maryland, filed 12th day of December, 1969, is appended hereto (Appendix P. 13); and the subsequent "ORDER" of The Court of Appeals of Maryland, Denying the petition for Writ of Certiorari, dated the 1st day of April, 1969, is also appended hereto, Appendix P. 23).

Grounds for Jurisdiction.

The jurisdiction of this Court is invoked under 28 U.S.C., s. 1257 (3) since a right, privilege, and immunity is specially claimed under the Fifth and Sixth Amendments of The Constitution of The United States.

The final "ORDER", without written opinion, of The Court of Appeals of Maryland, denying a Petition for Writ of Certiorari to The Court of Special Appeals of Maryland, affirming judgment of The Circuit Court for Caroline County, finding the accused petitioner, in a trial by jury, guilty of the crime of "Store House Breaking and Larceny", under the provisions of Article 27, Sec. 32–33 of the Annotated Code of Maryland, was entered on the 1st day of April, 1969.

Questions Presented for Review.

1. Did the State of Maryland violate standards and rules set forth by this Honorable Court in the case of Miranda by permitting officers of the law to interrogate the accused petitioner who had expressly warned the officers of wanting to remain silent while in custody; and would such methods and tactics of interrogation, by Maryland's law enforcement

officers, frowned upon by the court below, be tantamount to Maryland Courts deciding a "federal question of substance" in a judicial manner and "in a way probably not in accord with applicable decisions of this Court?"

2. Did the State of Maryland violate the Fifth Amendment of the United States Constitution by permitting officers of the law to interrogate the petitioner and accused, who warned of wanting to remain silent while in custody; and would such methods or tactics of interrogation, following the warning while in custody, run contrary to and afoul of the language of the Federal Constitution, protecting the citizens of The United States against self incrimination?

3. Did the State of Maryland violate the Sixth Amendment of the Constitution of these United States by allowing law enforcement officers to continue interrogating the accused petitioner while in custody, who did not want to speak but chose to remain silent; and would such a method or tactic of interrogation, following the warning, be tantamount to violations of the express language of that Federal Document, guaranteeing to all citizens of this Nation, (including the accused petitioner), the undeniable right "to have the assistance of counsel for his defense?"

Constitutional Provisions.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury,

"except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public

danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in a criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. nor shall private property be taken for public use, without just compensation."

Fifth Amendment, U.S. Constitution.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Sixth Amendment, U.S. Constitution.

Statutes and Rules of Court.

"Every person, his aiders, abettors, and counsellors, who shall be convicted of the crime of breaking a storehouse, filling station, garage, trailer, cabin, diner, warehouse or other outhouse in the day or night with an intent to commit murder or felony therein, or with intent to steal, take, or carry away the personal goods of another of the value of one hundred dollars ($100.00) or more therefrom, shall be guilty of a felony, and upon conviction sentenced to the penitentiary for not more than ten years."

Article 27, Section 32, Annotated Code of Maryland, 1957.

"Every person convicted of the crime of breaking into any shop, storeroom, filling station, garage, trailer, cabin, diner, tobacco house or warehouse, although the same be not contiguous to or used with any mansion house, and stealing from thence any money, goods, or chattels to the value of five dollars or upwards, or as being accessory thereto, shall restore the thing taken to the owner thereof, or shall pay him the full value thereof and shall be guilty of a felony and upon conviction be sentenced to the penitentiary for not more than ten years."

Article 27, Section 33, Annotated Code of Maryland, 1957.

"Where a state court has decided a federal question of substance not therefore determined by this Court, or has decided in a way probably not in accord with applicable decisions of this Court."

Jurisdiction on Writ of Certorari,
Rules Supreme Court of United States,
Part V, Rule 19, (a).

Statement of the Case.

On November 16, 1967, the Petitioner was found guilty by jury, sitting with Judge J. DeWeese Carter, in the Circuit Court for Caroline County, on two separate counts under the provisions of Article 27, Sections 32 and 33, of the Annotated Code of Maryland (1957 Ed.), of the charges of store house breaking and larceny, and he was sentenced to confinement in prison for the period of ten (10) years on each count, the sentences running concurrently; and on January 2, 1968, following his sentencing, the petitioner filed an appeal of his case to The Court of Special Appeals of

Maryland from the judgment and sentence. The Court of Special Appeals of Maryland, "Per Curiam", affirmed the judgment of the Circuit Court for Caroline County on the 12th day of November, 1968, and subsequently, the Petitioner filed "Motion for Reargument and To Stay Mandate Proceedings on the 9th December, 1968, and said motion was denied by the Court of Special Appeals of Maryland on the 12th December, 1968. The Petitioner then moved by Petition for Writ of Certiorari in the Court of Appeals of Maryland which Writ was denied on the 1st day of April, 1969.

Statement of Facts.

On Sunday morning, 2 July, 1967, two officers of the Cecil County Police, (William Hawley and Alexander Hirtzberg), received a call that the burglary alarm in a tavern known as "Co's", located in Elkton, Maryland, had sounded, and the officers drove their police car to the scene to investigate (T.20, Ls. 17-20).

When Officers Hawley and Hirtzberg arrived on the scene, at about 5:18 A.M., they observed the Petitioner, William Waltz Howell, seated behind the wheel of his automobile which was parked about 75 feet North of the building where the alarm had sounded (T.21, Ls. 1-2 and 12-22).

One of the officers, William Hawley, got out of the police car and approached the tavern, where he observed two cases of beer being thrown from the back window of the tavern by one, Wesley Warren Eaton, (allegedly an accomplice of the petitioner), who was immediately apprehended at the scene and placed under arrest by Officer Hawley (T.22, Ls. 1-6).

Following the immediate arrest of Wesley Warren Eaton at the scene of the crime, the Petitioner, William Waltz Howell, was brought back to the tavern by Officer Hirtzberg and placed under arrest, (T. 22, Ls. 12-17).

After the petitioner, William Waltz Howell, was placed under arrest, he was advised by Officer Hawley that he had a "right to remain silent" (T. 24, L. 6), and following this advice, Officer Hawley then read a "card" to the petitioner and told him he had a "right to talk to a lawyer, (T. 24, L. 11), and to have a lawyer present while being questioned", (T. 24, L. 12); and following this advice, the Petitioner was then asked by the officer did he, the Petitioner, "understand each of these rights that were explained" (T. 24, L. 26 and T. 25, Ls. 1-9), whereupon the Petitioner replied to Officer Hawley, "I am not going to say" (T. 25, Ls. 3-4); and upon being further asked by Officer Hawley that having "these rights in mind, do you (meaning the Petitioner) wish to talk to us now", (T. 25, L. 6), and the Petitioner, Howell, replied, "NO" (T. 24, Ls. 25-26, and T. 26, Ls. 1-9).

Subsequently, and without again being advised to remain silent, the Petitioner, Howell, was again questioned, about "an hour or an hour and a half later", while still in "custody", (T. 27, Ls. 2-4). The Petitioner was not advised as to whether he wanted a "lawyer" in the "card" read to him by Officer Hawley, (T. 35, Ls. 13-26 and T. 43, Ls. 1-8). Officer Hawley admitted this was a "method of interrogation", (T. 83, L. 26, and T. 84, Ls. 1-19).

Argument.

I.

MARYLAND VIOLATED THE STANDARDS AND RULES SET FORTH BY THIS COURT IN MIRANDA V. ARIZONA BY PERMITTING OFFICERS OF THE LAW TO INTERROGATE THE PETITIONER WHO HAD CHOSEN TO REMAIN SILENT WHILE IN CUSTODY AND ALSO VIOLATED RULES OF THE COURT IN DECIDING A FEDERAL QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT.

The established guiding rules of Miranda were commenced by the officers at the time of arrest (T.73, By the Court, Ls. 20-26); and carried further in the processing and arresting stages to the maximum point of determining that the accused-petitioner (William Waltz Howell), didn't care to talk, for having been asked, "having these rights in mind?", and the further question, "do you wish to talk to us?", his reply was "NO", (T.25, Ls. 2-9), thus slamming the door under Miranda to further interrogation while in custody. Once the "warning" is given, subsequent interrogations and questioning should and "must cease" if Miranda is to have any meaning. The further probes by the officer of the law reflected apparent violations of Fifth Amendment rights against self incrimination and appear to be infractions of the rules of this Court in deciding a federal question of substance in a way not in accord with applicable decisions of this Court if Miranda is set aside and ignored in such a fashion by any of the courts below. The exceptions appear

to have been timely taken (T. 60, Ls. 15-26, T. 61, Ls. 1-4, T. 181, Ls. 19-25, T. 182, Ls. 1-11 and 18-21, and by the Court below, T. 183, Ls. 12-26) and also (T. 184, Ls. 1-12). (See Appendix J, page 24.)

The law which governs the issues here raised by the Petitioner, William Waltz Howell, were set forth, established, and firmly entrenched by this Court in Miranda:

> "Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease."
>
> *Miranda v. Arizona*, 384 U.S. 438, at p. 473.

The petitioner concedes to Maryland that review of his case by the writ of certiorari is something which is not a matter of right in this Court, but is rather something generated in this Court through the eyes of justice, grounded primarily in sound judicial discretion, coming to light and warranted for review only if the situation or the circumstances of his case reflect "special and important reasons" for the granting of the writ.

The Courts below are not empowered by the Constitution, nor by the rules generating in The Supreme Court of The United States, to arbitrarily create judicial exceptions to the decisions emanating from the High Court; it appears that the situation of the petitioner is of substance

and importance because circumvention of Miranda seems to be the chief issue. If the Courts below can arbitrarily make exceptions to the Miranda decision by allowing or permitting officers of the law to interrogate an accused while in custody upon such shallow grounds, then the crush of Miranda, against such tactics being practiced against citizens of the United States, becomes hollow, baseless, and meaningless; and, once again, citizens of this Nation are subjected to the cruel and inhuman tactics of probing officials, and again become helpless and physically or mentally incapable, while under the harsh ordeal of such custody, of warding off the unconstitutional and senseless hot seat and hot light grillings which, by the testings of blood, sweat, and tearing experiences, have been known, time and again, to easily penetrate the frail core of human weaknesses.

The rules governing the jurisdiction of this honorable Court on Writ of Certiorari is clearly set forth in Rule 19, (a), of Part V:

> "Where a state court has decided a federal question of substance not therefore determined by this Court, or has decided it in a way probably not in accord with applicable decisions of this Court."

II.

THE STATE OF MARYLAND VIOLATED THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES WHEN IT PERMITTED OFFICERS OF THE LAW TO USE FOLLOW-UP QUESTIONING AND METHODS OF

INTERROGATION AGAINST THE ACCUSED-PETITIONER WHO WARNED OF WANTING TO REMAIN SILENT WHILE IN CUSTODY AND THEREBY DEPRIVED PETITIONER OF FUNDAMENTAL CONSTITUTIONAL RIGHTS, RESERVED FOR PERSONS BY THAT FEDERAL DOCUMENT AND SAFEGUARDED BY THE JUDICIAL INTEGRITY OF THIS COURT IN MIRANDA, FROM BEING "COMPELLED IN A CRIMINAL CASE" TO BE A "WITNESS AGAINST HIMSELF."

The tactics used against the petitioner while he was under arrest and in custody of the law were nothing more, nor less, than technical police methods of interrogation, (T.83, Ls.26 and T.84, Ls. 1-19); and when the petitioner, William Waltz Howell, chose not to speak but to remain silent (T.24, Ls. 4-23, T.25, Ls. 1-14), the strong warning bells of Miranda came to life, and advising him of his rights, in an atmosphere of inhospitable custody, was nothing less than a shammed up staging with unwholesome dressing to lure and ensnare the petitioner to admit or say, or to confess or do, exactly what the Constitution forbids, and precisely what Miranda intended to bar.

The Constitution and Miranda prohibits the States from compelling citizens, while under the strong harness and yoke of police custody, to be unconstitutionally subjected to, or involuntarily snared into, the harshness or unpleasantness of self incrimination; and where the Fifth Amendment, expressly makes provisions against persons in criminal cases of being witnesses against themselves,

"no person. . . shall be compelled in a criminal case to be a witness against himself. . . ."

Fifth Amendment, U.S. Constitution.

This Honorable Court has equally forbidden such violations in the Courts below by laws precisely governing such issues as raised by Miranda,

"Without the right to cut off questioning the setting of in custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked."

Miranda v. Arizona, 384 U.S. 438, at p. 473.

III.

THE STATE OF MARYLAND VIOLATED THE SIXTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES BY ALLOWING OFFICERS OF THE LAW TO QUESTION AND INTERROGATE THE PETITIONER IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS "TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE" WHEN HE CHOSE NOT TO SPEAK, BUT TO REMAIN SILENT, WHILE IN CUSTODY, AND BEING SUBJECTED BY THE POLICE TO INTERROGATION AFTER THE WARNING.

It would appear fundamental under the Sixth Amendment to The Constitution of the United States, that any, or all who are accused, and must prepare, or face up

to criminal prosecution, shall have the right to enjoy and lean heavily upon the assistance of counsel for his defense.

We cannot now change, nor can we ignore, what had taken place, in the arrest and taking into custody, of the petitioner, William Waltz Howell. The petitioner was implicated in a burglary at Coe's Tavern (T. 20, Ls. 13-16) and while under the strong suspicion of having committed a crime, was taken into custody and arrested (T. 22, Ls. 4-7), and that while he was under arrest and in such custody of the law, (T. 22, Ls. 12-17), he chose not to speak but to remain silent, thus buzzing the warning bell of Miranda (T. 25, Ls. 2-13).

At such a critical stage of the arrest, when the crime had focused very strongly on the petitioner, it became quite obvious under the Constitution and Miranda, that the assistance of "counsel" for his defense, was then in urgent need. Especially when the officers commenced their "method of interrogation," (T.84, Ls. 5-19).

The glare of the Sixth Amendment should have been reason enough to stop the interrogations unless counsel is present to defend; and the strong bells of Miranda, should have been or given rise to sufficient warning, that the pressing fingers of the law have reached beyond the borders tolerated by this Court and the Constitution of the United States.

> "In all criminal prosecutions, the accused shall enjoy the right. . .to have the assistance of counsel for his defense."
>
> *Sixth Amendment, U. S. Constitution.*

Reasons for Granting the Writ.

The rules established by this Court in Miranda concerning the interrogating and questioning of citizens of the United States while in custody of the law, appear to be judicially intended as fundamental guides for officers of the law as well as the Courts below. The very purpose of Miranda is to afford shelter and protection to the citizens whenever they're in custody and subjected to the forceful probing tactics of law enforcement officers whenever the strong or weak lights of accusation cuts across their experiences and threatens their lives, liberties, honors or general fortunes; especially their respected privileges, or fundamental rights guarded, under the supports of the Fifth or Sixth, or the Fourteenth, or any other Amendment, shielding them from the harsh glares of prosecution or imprisonment.

The protection of the rights, honors, or liberties of the citizens of the United States, is reason enough for the granting of the Writ; especially when such sacred rights generate from the Constitution of the United States which is the Supreme Law of the Land; and when crystal clear interpretations given to any clause of that document by the judicial deliberations and findings of this Honorable Court, are in jeopardy by re-interpretation, circumvention, or just plainly violated or ignored.

> "What takes place in the secret confines of the police station may be more critical than what takes place at the trial."
>
> Dissenting Opinion: *Crooker v. California*, 357 U.S. 433, 444-45, 78 Sup. Ct. 1287, 2 L.Ed. 2d, 1448 (1958).

"What use is a defendant's right to effective counsel at every stage of a criminal case if, while he is held awaiting trial, he can be questioned in the absence of counsel until he confesses."

(Justice Douglas, Black, and Brennan, in *Spano v. New York*, 360 U.S. 315, 326, 79 Sup. Ct. 1202, 3 L.Ed. 1265 (1959).

Conclusion.

WHEREFORE, your petitioner respectfully prays that the final judgment of the Court of Appeals of Maryland, upholding the ruling of the Court of Special Appeals of Maryland, affirming the conviction of your petitioner, be reversed and the case be remanded to that court with direction to remand to the Circuit Court for Caroline County, Maryland, for a new trial.

Respectfully submitted,

MORGAN L. AMAIMO,

Counsel for petitioner.

APPENDIX A.

Notice of Denial of Motion for Reargument from Clerk of Court of Special Appeals of Maryland.

COURT OF SPECIAL APPEALS
ANNAPOLIS, MARYLAND 21404

JULIUS A. ROMANO
CLERK

December 12, 1968

Morgan L. Amaimo, Esquire
18 E. Lake Avenue
Baltimore, Maryland 21212

Re: William Waltz Howell v. State of Maryland
No. 57, September Term, 1968

Dear Mr. Amaimo:

This will acknowledge receipt of your Motion to Enter Appearance and the Motion to Strike Appearance, filed by Gerald Siegel, Esquire, in the captioned appeal, which you delivered personally to this Court on December 9, 1968.

Your Motion for Reargument and to Stay Mandate Proceedings, filed the same date in the captioned appeal, was presented to the Court for its consideration and the same has been denied. A copy of the Mandate is enclosed.

Yours very truly,

Jean W. Lafferty

Jean W. Lafferty
Chief Deputy Clerk

JWL:llh

Encl.

cc: Atty. Gen.
Gerald Siegel, Esquire

APPENDIX B.

Motion to Enter Appearance.

Mr. Clerk:

Please enter the appearance of Morgan L. Amaimo for the Appellant in the above entitled case:

/s/ MORGAN L. AMAIMO,
18 E. Lake Avenue,
Baltimore, 21212, Maryland,
Phone Sar-7-4866, 433-8934

THIS WILL ACKNOWLEDGE TO WHOM IT MAY CONCERN THAT I HAVE DISMISSED ALL ATTORNEYS OF RECORD AND HAVE ENGAGED AND APPROVE ATTORNEY MORGAN L. AMAIMO TO ENTER HIS APPEARANCE AS MY NEWLY APPOINTED LAWYER TO HANDLE MY CASE:

/s/ WILLIAM WALTZ HOWELL,
Appellant,
Denton Jail, Denton, Maryland.

CERTIFICATION: This will certify that a copy of the aforementioned motion was mailed, postage prepaid, to Francis B. Burch, Esq., Attorney General of Maryland, State Law Department, Suite 1200, One Charles Center, Baltimore, 21201, Maryland, on this ____ day of _____ , 1968:

/s/ MORGAN L. AMAIMO

APPENDIX C.

Motion to Strike Appearance.

Mr. Clerk:

The Appellant, William Waltz Howell, having arranged to engage new counsel to represent him in the above entitled case, please strike my appearance from the records.

/s/ GERALD SIEGEL,
453 Equitable Building,
Baltimore, 21202, Maryland,
Phone Saratoga 7-0054

THIS WILL SERVE TO ACKNOWLEDGE TO WHOM IT MAY CONCERN IN THE COURT OF SPECIAL APPEALS OF MARYLAND, OR IN ANY OTHER COURT OF THE STATE OF MARYLAND, THAT I HAVE DISMISSED ATTORNEY GERALD SIEGEL and HIS ASSOCIATE ATTORNEYS FROM MY CASE, AND I HAVE ARRANGED TO APPOINT OTHER COUNSEL TO REPRESENT ME, AND I APPROVE THE MOTION OF MR. SIEGEL TO STRIKE HIS APPEARANCE:

/s/ WILLIAM WALTZ HOWELL, Appellant.

CERTIFICATION: This will Certify That A copy of This Motion To Strike Appearance was mailed, postage prepaid, to Francis B. Burch, Esq., Attorney General of Maryland, State Law Department, Suite 1200, One Charles Center, Baltimore, 21201, Maryland, on this 6th day of December, 1968.

/s/ GERALD SIEGEL

APPENDIX D.

Motion for Reargument and to Stay Mandate Proceedings

Comes now the Appellant, William Waltz Howell, by his Attorney, MORGAN L. AMAIMO, and Moves this Honorable Court, Pursuant to Rule 1050, of The Maryland Rules of Procedure, to enter an Order granting reargument of this Appeal, and Staying the Mandate Proceedings, Pending disposition of this Motion, and for reasons therefore, Respectfully say:

1: – That this Honorable Court filed Its Opinion on the 12th day of November, 1968, Affirming the Judgment appealed from. It is respectfully submitted by Counsel for the Appellant that this case should be set down for reargument for the following reasons:

I.

THE STATEMENTS MADE BY APPELLANT TO OFFICER HAWLEY, WHILE IN CUSTODY, WAS TANTAMOUNT TO RESPONDING TO "INTERROGATION" AND CONSTITUTED "QUESTIONING INITIATED BY LAW ENFORCEMENT OFFICERS" WITHIN THE MEANING OF THE RULE LAID DOWN BY THE SUPREME COURT IN THE CASE OF MIRANDA vs. ARIZONA, (384 U.S. 436), THUS DIRECTLY OR INDIRECTLY VIOLATING APPELLANT'S CONSTITUTIONAL RIGHTS AGAINST SELF INCRIMINATION SAFEGUARDED AND GUARANTEED UNDER THE PROVISIONS OF THE 5TH AMENDMENT.

This Court, in its opinion filed on the 12th of November, 1968, affirmed the judgment of the trial Judge below, and ruled that the contentions of appellant on the appeal that certain statements made by appellant to the police and introduced in evidence at the trial were not in violation of the principles laid down in "*Miranda v. Arizona,* 384 U.S. 436"; and that the statements made by appellant were "not in response to an interrogation", or "questioning initiated by law enforcement officers", to fall within the framework and meaning, or within "the ambit of the *Miranda* decision", but were more in "the nature of volunteered information"; and that such "response" by the appellant to "such police information was not the product of an interrogationn", "*either direct or subtle*".

The Ruling of The Supreme Court in the case of Miranda was intended as ground rules for the general protection of an accused under the 5th Amendment; and its purpose, basically, was to shelter the person against "self incrimination". The conduct of an officer of the law cannot circumvent constitutional safeguards, no more than the conduct of any agency or instrumentality of government, to include the Government, itself; and the rights of our weakest citizens, under the 5th Amendment, or under any part of the Constitution, are on an equal footing with the strongest among us. When Constitutional Rights are in jeopardy, the safeguard and protection of guaranteed rights should prevail over doubtful or technical interpretations, whether they be of conduct, of the raw meaning or play of words, or the raw meaning or the play of conditions or circumstances following the taking into custody of citizens accused or charged with crimes affecting their lives, liberties, or their property or other inalienable or sacred rights.

Basically, we cannot change, nor can we ignore what had taken place in the arrest, and in the taking into custody of the appellant; and we should not treat lightly or ignore, or lay aside as trivial or unimportant, the things said or done by the Police while an accused is wrapped under the harness, or the strap, or the hand-cuffs, or even the strong lime-light of "custody"; and especially the "interrogation" or the questioning while under custody of the Police.

In the case below, *State vs. Howell,* before his Honor, Judge Carter, the Officer admitted on the cross-examination that while the appellant was in his "custody", he had used a "method of interrogation" on him; and if this novel technique is merely used by the Officers of the law as a cover up or *subtle* shield for the "interrogation", the basic rights of the appellant were clearly violated. (See Trans. of Rec. Pp 84 & 85. Ans. 4 P. 84).

The Officer admits under the cross examination that he had a "purpose" in the method which he used; and the purpose of an interrogator is to get at the truth by sifting out the "lie". (See Trans. P. 84:

Q: – "Why, for what purpose?"

A: – "This is a method of interrogation or a method of interview. My purpose was letting him know that I knew he had told me an out and out lie." (See Attached Copy of Trans. Pp 84 & 85)

The case falls squarely within the law governing the issue raised in *Miranda v. Arizona*, notwithstanding the

subtle methods used by the officer of the law to get around the arena of guide lines set out by the Supreme Court to protect against violations of the 5th Amendment. What may appeared to be harmless encroachments by the Officer were trespasses and forbidden violations, detrimental to the appellant without the safeguards of the Constitution to shield him from trickery, artifice, or other crafty motives, not constitutionally justified under the rules. There is no doubt that the circumstances under which the Officer confronted the appellant to probe for exploitation of *lies* to seek or quest the *truth* were *subtle* characterizations or *methods* of *interrogating*, was an *"in-custody interrogation"*, operating on the appellant to *"overcome free choice in producing a statement after the privilege had been once invoked"*, directly running afoul of Miranda.

II.

THE EVIDENCE WAS NOT SUFFICIENT TO CONVICT AND THE APPELLANT COULD NOT BE CONVICTED ON THE UNCORROBORATED TESTIMONY OF THE ACCOMPLICE.

The testimony offered in the Court below against the appellant was that of an alleged accomplice; and, standing alone, without independent corroboration, was insufficient to convict; and without more evidence, and in light of the crush of the case under Miranda, this Honorable Court would be Moved to Reverse, without remand for further proceedings.

Tucker v. State, 277 Md. 422, 206 A.2d 691
Forrester v. State, 224 Md. 337, 167 A.2d 878
Booth v. State, 229 Md. 528, 184 A.2d 838.

Counsel for the Appellant respectfully urges this Honorable Court to Stay the Proceedings And Mandate Pending disposition of this Motion so that time will not run against Appellant, should it be necessary to file Petition For Certiorari in The Maryland Court of Appeals.

WHEREFORE YOUR APPELLANT RESPECTFULLY PRAYS:

a: – That this Honorable Court enter an Order Granting Reargument of this Appeal.

b: – That this Honorable Court enter an Order Staying the Mandate Proceedings Pending Disposition of this Motion.

c: – That this Honorable Court Grant such other and Further Relief as The Court may Deem appropriate and Just.

Respectfully submitted,

MORGAN L. AMAIMO

ORDER

The Court, having read and considered the aforegoing Motion For Reargument And To Stay Mandate Proceedings, it is this _____ day of _____ 19___.

ORDERED, That the Appellant's Motion for Reargument is, and the same, is hereby Granted; and it is further

ORDERED, That upon the Appellant's Motion, that the Case be, and the same is hereby reset for rehearing on the _____ day of _____ 19____; and further ORDERED,

That the Mandate be and the same is hereby Stayed:

/s/ JUDGE

Transcript Pages 84 and 85

"... Eaton youth, you, I believe you testified that you told Mr. Howell that you had learned certain things from the Eaton youth, is that correct? A. Yes, sir.

Q. And what was your purpose at that time in telling him this? A. To refute what he had advised me of his knowledge of the Eaton youth and his background.

Q. Wasn't it your purpose at that time to try to interrogate Mr. Howell to try to find out what, if anything, he knew about this breaking? A. No, it wasn't my purpose to interrogate him. I had already received some substantial

information from the Eaton youth and I wanted to let the defendant, Howell, know that what he had told me had been refuted.

Q. *Why, for what purpose?* A. *This is a method of interrogation or a method of interview. My purpose was letting him know that I knew he had told me an out and out lie.* (Emphasis Supplied)

Q. It's a method of interrogation and at that point you were really interrogating the defendant? A. I may have termed it wrong. I wouldn't go as far as to say – I don't know how I want to say it, to tell you the truth. It's just a method of letting this man know that what he had told me was a lie.

Q. Now isn't it true that what you were doing there is trying to tell him you had learned certain things and that you knew that he knew the Eaton boy and what did he have to say about it, wasn't that your purpose, Officer? A. No, not what did he have to say about it, no.

Q. You said yourself I think before that it was a method of interrogation. A. As I said before, I am sorry. I may have used the incorrect term. I didn't mean it that way.

The Court: Isn't the matter, Mr. Guth, to be resolved on the basis of what all the circumstances surrounding this conduct amount to, an interrogation of the accused as a matter of law, and not whether this man thinks it amounts to interrogation or whether he doesn't?

Mr. Guth: Yes, I think it does, your Honor. Although the statement may not have been in the form of a question, I submit that it certainly was a form of interrogation, that the defendant was being interrogated.

The Court: A question to be resolved as a matter of law whether this conduct amounted to interrogation.

Mr. Guth: I think so. Now Officer, at that time Mr. Howell admitted knowing the Eaton boy, is that correct? A. That's correct.

Q. But he also said that he had no idea that he was going to break into the tavern, isn't that correct? A. Yes, sir, that's correct.

Q. Did he tell you that he was in that area with the Eaton . . . "

CERTIFICATION OF SERVICE

This is to certify that a Copy of the aforegoing Motion For Reargument And To Stay Mandate Proceedings, Together With A Copy of the Order, was mailed, Postage Prepaid, to Francis B. Burch, Esquire, Attorney General For The State of Maryland, State Department, Suite 1200, One Charles Center, Baltimore, 21201, Maryland, on this _____ day of _____, 1968:

/s/ MORGAN L. AMAIMO

APPENDIX E.

Mandate of the Court of Special Appeals of Maryland.

MANDATE

Court of Special Appeals of Maryland

No. 57 , September Term, 19 68

William Waltz Howell

v.

State of Maryland

Appeal from the Circuit Court for Caroline County

Filed: April 15, 1968

4/23/68 - Order signed by Murphy, CJ, striking appearance of Richard J. Guth as counsel for appellant.

11/12/68 - Per Curiam filed.

Judgment affirmed.

12/9/68 - Motion to Strike Appearance filed by Gerald Siegel, counsel for appellant.

12/9/68 - Motion to Enter Appearance as counsel for the appellant filed by Morgan L. Amaimo, Esquire.

12/9/68 - Motion for Reargument and to Stay Mandate Proceedings filed by Amaimo, counsel for appellant.

12/12/68 - Motion denied by Court. Mandate issued.

STATEMENT OF COSTS:

In Circuit Court:

Record $20.00
Stenographer's Costs $200.00

In Court of Special Appeals:

Filing Record on Appeal	$20.00
Printing Brief for Appellant	$39.05
Reply Brief	-000-
Portion of Record Extract — Appellant	-000-
Appearance Fee — Appellant	-000-
Printing Brief for Appellee	$17.00
Portion of Record Extract — Appellee	-000-
Appearance Fee — Appellee	-000-

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this Twelfth *day of* December *A. D. 19* 68.

Clerk of the Court of Special Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

APPENDIX F.

Opinion Reported in the Court of Special Appeals of Maryland, "Per Curiam"

PER CURIAM:

Appellant was convicted by a jury in the Circuit Court for Caroline County of storehouse breaking and larceny and was thereafter sentenced to a term of ten years imprisonment. He contends on this appeal (a) that certain statements made by him to the police were introduced in evidence in violation of the principles of *Miranda v. Arizona*, 384 U.S. 438, and (b) that he was convicted upon the uncorroborated testimony of an accomplice.

The evidence at trial showed that at 5:18 a.m. on Sunday, July 2, 1967, the police were notified that the burglar alarm at Cos's Tavern had been actuated. Two officers immediately went to the tavern where they observed appellant sitting behind the wheel of a car parked approximately seventy-five feet north of the tavern. One of the officers went to the rear of the tavern where, after hearing a crash, he observed two cases of beer being pushed out of the tavern window, followed by one Wesley Eaton. Both Eaton and appellant were arrested at the crime scene.

The record discloses that after appellant was given his particularized four-fold *Miranda* warning, he stated that he didn't wish to talk to the police. Approximately an hour and a half later, while appellant was being "processed" at the police station, he was told in narrative form that Eaton admitted that it was his idea to break into the tavern and

that the appellant, with knowledge of the criminal design, brought him there from Baltimore to burglarize the premises. Without any questioning by police, appellant responded to this information by admitting that he knew Eaton, that he had picked him up hitchhiking, and that while they had stopped along the road, he did not know that Eaton intended to break into the premises. These statements were introduced in evidence over appellant's objection.

In *Miranda*, the court held at page 473 that if, after the requisite warnings are given, "the individual indicates in any manner at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." While quite clearly appellant was in police custody when he made the incriminating admissions, we think it plain that his statements were not made in response to an "interrogation" within the meaning of *Miranda*. On the record before us, we hold that there was no "questioning initiated by law enforcement officers" within the ambit of the *Miranda* decision; rather, the officers respected appellant's right to remain silent following his arrest and it was not until almost two hours had elapsed that they advised him of what Eaton had told them. Appellant's response to such police information was not the product of an interrogation, either direct or subtle, but was more in the nature of volunteered information. See *Campbell v. State*, 4 Md. App. 448; *Duckett v. State*, 3 Md. App. 563; *Myers v. State*, 3 Md. App. 534.

Nor do we find any merit in appellant's second contention. In *Boone v. State* 3 Md. App. 11, 19-20, we observed that "the rule in this State is that evidence

corroborating the testimony of an accomplice is not sufficient if it merely shows the commission of the offense or the circumstances thereof and that some of the material facts of the accomplice's testimony which it must support are such material facts which tend to show that the accused was either identified with the perpetrators of the crime or had participated in the commission of the crime itself." We think appellant's presence at the scene of the crime, coupled with his admission that he knew Eaton, and with other evidence in the case showing the appellant and Eaton lived within a block of each other, constituted sufficiently corroborative evidence of appellant's identification with the perpetrator of the crime and his participation in the crime itself. Even without Eaton's testimony, the fact of appellant's presence at the scene of the crime was under the circumstances of this case strong evidence of his guilt. See *Tasco v. State*, 223 Md. 503.

JUDGMENT AFFIRMED.

APPENDIX G.

Petition for Writ of Certiorari.

NOW comes the Appellant, William Waltz Howell, By his Attorney, MORGAN L. AMAIMO, and Respectfully represents unto this Honorable Court:

1. That on January 2, 1968, the Appellant was found guilty in The Circuit Court of Caroline County, Denton, Maryland, by his Honor, Judge Carter, of the crime of "Store House Breaking and Larceny" under Art. 27, Ann. Code of Md.

2. That a timely Appeal was taken to The Court of Special Appeals of Maryland, raising the following questions:

a. When the Appellant, William Waltz Howell, said he did not wish to say anything, was the subsequent questioning by the Police improper?

b. Can the Appellant be convicted on the uncorroborated testimony of the accomplice?

3. That on November 12, 1968, The Court of Special Appeals of Maryland, Per Curiam, affirmed the Appellant's conviction.

4. That on December 9, 1968, a timely Motion For ReArgument and To Stay Mandate Proceedings was filed by Appellant for the following reasons:

a. That the statements made by Appellant to Officer Hawley, while in custody, was tantamount to

responding to "interrogation" and constituted "questioning initiated by law enforcement officers" within the meaning of the rule laid down by the Supreme Court in the case of Miranda v. Arizona, (384 U.S. 436), thus directly or indirectly violating Appellant's Constitutional rights safeguarded against self incrimination and guaranteed under the provisions of the 5th Amendment.

b. And that the evidence was not sufficient to convict, and the Appellant could not be convicted on the uncorroborated testimony of the accomplice.

5. That on 12 December, 1968, The Motion For Reargument and To Stay Mandate Proceedings, were considered by The Court of Special Appeals and the same were Denied, and Mandate Issued.

6. That the Appellant respectfully contends and believes that the questions raised regarding the "Interrogation", (See attached copy of cross-exam of officer admitting it to be a "method of interrogation"), by the officers of the law, while in custody, were merely subtle police methods of questioning, and ran afoul of the Appellant's Constitutional Rights under the 5th & 6th Amendments as covered by the Supreme Court Decision of Miranda vs. Arizona, 384 U.S. 436. Appellant further believes the Court below should not have convicted him on the uncorroborated testimony of an accomplice, standing alone, without independent corroboration, thus running afoul of the decision of this Court in Forrester v. State, 224 Md. 337, citing Watson v. State, 208 Md. 210.

7. The Appellant believes the questions raised by him regarding his Constitutional rights during the in custody interrogation is one of prime importance, and of substance, and a proper subject for determination by this Honorable Court.

FOR THE REASONS ABOVE, it is Respectfully requested that a Writ of Certiorari be Granted to The Appellant by this Honorable Court.

/s/ MORGAN L. AMAIMO,
Attorney for Appellant.

/s/ WILLIAM WALTZ HOWELL,
Appellant.

Transcript Pages 84 and 85

"... Eaton youth, you, I believe you testified that you told Mr. Howell that you had learned certain things from the Eaton youth, is that correct? A. Yes, sir.

Q. And what was your purpose at that time in telling him this? A. To refute what he had advised me of his knowledge of the Eaton youth and his background.

Q. Wasn't it your purpose at that time to try to interrogate Mr. Howell to try to find out what, if anything, he knew about this breaking? A. No, it wasn't my purpose to interrogate him. I had already received some substantial information from the Eaton youth and I wanted to let the defendant, Howell, know that what he had told me had been refuted.

Q. *Why, for what purpose?* A. *This is a method of interrogation or a method of interview. My purpose was letting him know that I knew he had told me an out and out lie.* (Emphasis Supplied)

Q. It's a method of interrogation and at that point you were really interrogating the defendant? A. I may have termed it wrong. I wouldn't go as far as to say -- I don't know how I want to say it, to tell you the truth. It's just a method of letting this man know that what he had told me was a lie.

Q. Now isn't it true that what you were doing there is trying to tell him you had learned certain things and that you knew that he knew the Eaton boy and what did he have to say about it, wasn't that your purpose, Officer? A. No, not what did he have to say about it, no.

Q. You said yourself I think before that it was a method of interrogation. A. As I said before, I am sorry. I may have used the incorrect term. I didn't mean it that way.

The Court: Isn't the matter, Mr. Guth, to be resolved on the basis of what all the circumstances surrounding this conduct amount to, an interrogation of the accused as a matter of law, and not whether this man thinks it amounts to interrogation or whether he doesn't?

Mr. Guth: Yes, I think it does, your Honor. Although the statement may not have been in the form of a question, I submit that it certainly was a form of interrogation, that the defendant was being interrogated.

The Court: A question to be resolved as a matter of law whether this conduct amounted to interrogation.

Mr. Guth: I think so. Now Officer, at that time Mr. Howell admitted knowing the Eaton boy, is that correct? A. That's correct.

Q. But he also said that he had no idea that he was going to break into the tavern, isn't that correct? A. Yes, sir, that's correct.

Q. Did he tell you that he was in that area with the Eaton . . . "

AFFIDAVIT

BEFORE ME, A Notary Public, In And For Caroline County, State of Maryland, Personally Appeared William Waltz Howell And Made Oath in Due Form of Law that the aforegoing Petition For Writ of Certiorari, is true to the best of his information, knowledge, and belief, and that the same is not intended for delay, but that his claim and contentions are meritable under the Law of Maryland & The Constitution of the United States.

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS 27th day of December 1968:

/s/ JEANETTE M. LUTZ
Notary Public

Seal.

CERTIFICATE OF SERVICE.

This is to Certify that a Copy of the Aforegoing Petition For Writ of Certiorari, was mailed, Postage Prepaid, to FRANCIS B. BURCH, Esquire, Attorney General For The State of Maryland, State Law Department, Suite 1200, One Charles Center, Baltimore, Maryland, on this 30 day of December 1968.

/s/ MORGAN L. AMAIMO,
Attorney for Appellant.

APPENDIX H.

Court of Appeals of Maryland,
Misc. Docket No. 193, Sept. Term, 1968
Howell v. Maryland

Court of Appeals of Maryland

MISCELLANEOUS DOCKET

No. 193 September Term, 19 68

William Waltz Howell

v.

State of Maryland

Morgan L. Amaimo
Attorney for Petitioner

Francis B. Burch
Attorney for Respondent

Date: December 30, 1968

STATE OF MARYLAND, Sct:

Receipt is hereby acknowledged of a petition for writ of certiorari filed in the above entitled case.

You will be notified when action is taken by the Court.

Clerk of the Court of Appeals of Maryland

APPENDIX I.

"Order" in the Court of Appeals of Maryland, Denying Petition for Writ of Certiorari, 1 April 1969

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED by the Court of Appeals of Maryland that the said petition be, and it is hereby, denied.

/s/ HALL HAMMOND

Chief Judge

Date: April 1st, 1969.

APPENDIX J.

Copy of Transcript Pages 55–68, 181–184.

(T.55) The Court: Now you are proffering what he said, as I understand it, Mr. Podolak, what he said in reply to questioning he had two years in law school and he had twenty one years in the United States Marine Corps, and he didn't have to go through all of that, he understood it, and then was that when he was asked the question, "Do you understand each of these rights", and his reply was that, "I don't care to say", and when he asked him if he wanted to make a statement, he said "no," those two replies made up the conversation, and also when he was advised or faced with the statement that Eaton had made, that he said, "Yes, I did know him and he did come here with me from Baltimore, but I didn't know anything about him breaking into this tavern". That's what you wish to offer as a verbal admission?

Mr. Podolak: Yes, sir.

The Court: That he has made all statements in the nature of admissions?

Mr. Podolak: Yes, sir.

The Court: And you claim that the State has offered sufficient evidence to show, as a condition precedent to their being admitted, that they were voluntarily made, and you object to those statements being admitted into evidence?

Mr. Guth: Yes, I do. I think the pertinent statement would be the one that has to do with knowing the defendant and being associated with him.

The Court: Do you object to the other statements?

Mr. Guth: I object to any statement made by this defendant (T.56) after he was placed in custody in the nature of an admission.

The Court: What do you claim is in the nature of an admission?

Mr. Guth: I would submit to your Honor that any statement that he made that would connect him in any way with the other boy, Eaton, would be in the nature of an admission, and I feel that he was not properly advised of his rights. I think that it is obvious that he was under arrest at the time that Officer Hirtzberg arrested him and placed handcuffs on him. He was not immediately advised of his rights. Officer Hirtzberg testified he was advised of his rights on two occasions. Officer Hawley, who actually did the advising, seems to testify that it only occurred at the tavern.

The Court: That's all he related. I dont't know that the specific, exact question was asked was that the only time.

Mr. Guth: I don't believe that was asked, but I think had the Officer actually advised him on more than one occasion certainly on this particular point he would have come forward with the information since we were delving into that area. I think it is significant that although he is

advised he has a right to consult a lawyer he is not asked at that time, "Do you want to consult a lawyer", which I believe has been held to be eseential to properly advising someone of their rights, not only you have a right to consult a lawyer but do you want a lawyer and if you make a telephone available for him to call a lawyer. This was not done. Thereafter the testimony of Officer Hawley was to the (T.57) effect he came in to Mr. Howell and told him about this information that had come to be known to him through the Eaton boy, and he tried to infer that this was not interrogation or a matter of questioning. I think that certainly whether it was given in the form of a question or not, that this certainly was interrogation, and the purpose was obviously to obtain information from the defendant. Now under the Miranda case I think the defendant has not been properly advised of his rights or allowed to consult or contact an attorney, and I think it is also significant that he was not told, upon being brought back to the jail prior to this questioning which we submit took place that, "Now, well you said you don't want to talk to us before and you still have a right to remain silent, but this is what we found out", and thus and so. I think it was incumbent on the police officer at that time who was continuing his investigation, to interrogate or to say to Mr. Howell, "Would you like to talk to us about this matter now since you have already expressed a desire not to talk", but he didn't do that. He went on and told Mr. Howell what he had learned from the other suspect in the case, supposed to obtain some admissin from him, and he did obtain the admission that Mr. Howell knew the defendant but didn't know what was going on, and I submit that this is certainly critical to the defendant's case.

The Court: All right, sir. Mr. Podolak, you want to be heard on this point?

Mr. Podolak: Yes, sir. I think certainly the warnings were adequate enough.

(T.58) The Court: The point that Mr. Guth makes there was an absence of an inquiry do you want a lawyer. He told him of his right to obtain one but he didn't ascertain whther he wanted one or not. What do you have to say about that?

Mr. Podolak: I think he certainly went far enough when he stated, "If you don't have one or cannot afford one, the State will provide you with one".

The Court: What was his reply, his reply to the inquiry, "Do you understand each of these rights"? He said, "I don't care to say whether I do or not". "Do you want to talk?" "No". Now is that tantamount to when he said he didn't want to talk and he didn't care to say whether he understood what had been said to him, or didn't understand it, is that tantamount to saying, "I don't want a lawyer because I am not going to talk"?

Mr. Podolak: I think this has to be taken in conjunction with a statement he made a few seconds prior to that, that he had two years law school and twenty one years in the Marines, he didn't need any help at all. I don't know how far an officer has to go. Does he have to receive a positive no that he doesn't want a lawyer?

The Court: Suppose he says, "I am not going to tell you whether I want a lawyer or whether I don't?"

Mr. Podolak: I believe that the State has gone far enough as to advise him that if he doesn't want to say anything he doesn't have to, and anything he says may be used against him, and he has a right to consult with a lawyer and he can be present at this (T.59) questioning, and if he cannot afford one the State will provide one. I don't see how the State can go any further. I don't think they have to receive a positive no out of the accused. Certainly that would be carrying it too far when he has advised the officer prior to this he doesn't want to be bothered with this, he knows all about this, he has had two years law school. I don't know what else the officer could do.

The Court: In other words, your position is all the State is required to do, even under Miranda, is to affirmatively advise him of his right to a lawyer, and that if he didn't have the money to employ one, one would be provided for him nevertheless, and ask him if he understands his rights, and if he says then, "I don't care to tell you whether I understand or whether I don't", that that's a matter that is as far as the State is required to go?

Mr. Podolak: Yes, sir, I think so.

The Court: And that, "I am not going to make any statement", would any useful purpose be served, if he makes that reply, to say, "Well, won't you tell us whether you want a lawyer or not"?

Mr. Podolak: I think the next affirmative action should be on his part. If he wants one, let him advise the officer that he does right that moment. The part concerning the admission wasn't at the instance of a question, merely that

the information was related to him. He had been advised prior to this that he didn't have to say a word, and he said he didn't want to, and he had no duty to speak at that time. It was an admission against (T.60) interest and I think it certainly should be admitted.

* * * * * * *

Mr. Guth: If your Honor please, I think the important thing here is that the defendant be given the opportunity to obtain a lawyer. Now when he is in custody and he is handcuffed, as he was to the car, and they ride him back down to the tavern and then this officer takes out this card and he reads off all these things, and then at the end he says, "Well now, do you want to talk to us", I don't think that this is giving him the opportunity to obtain a lawyer. I think it is incumbent upon the police officer to ask him following advising him of these rights by reading it off of a card, "Do you want a lawyer, do you want an opportunity to get a lawyer", and he did not do this. Therefore I submit that this actually was interrogation in the nature of (T.61) telling him what the Eaton boy had said, was a continuation of the interrogation that had taken place in the police car about this thing. I think he was not given adequate opportunity to obtain counsel.

The Court: Now could we have Officer Hawley? I would like to have him back on the stand. The Court has some questions to ask him.

Officer WILLIAM O. HAWLEY, here recalled to the stand for further testimony, having been previously duly sworn, was further examined, and further testified as follows:

(Questions propounded by the Court)

Q. Officer Hawley, you testified that the accused, Mr. Howell, did call his wife by telephone? A. Yes, sir.

Q. And that you understood from what you heard of the conversation that he was suggesting to her to contact some attorney in his behalf? A. Yes, sir.

Q. When was that telephone call? A. At the police station.

Q. Well, how soon after or before he had told you that he did know Eaton? A. I would say approximately fifteen to twenty minutes.

Q. Fifteen to twenty minutes? A. Yes.

Q. What did he say to you or in your presence about wanting (T.62) to use the phone before the telephone call was made, immediately before it was made? Did he ask permission to use it? A. Yes, sir, but I don't recall the exact words.

Q. Well, the substance of what he said. A. I believe that it was that he wanted to call his wife and let her know where he was. I don't recall the exact words that he used.

Q. What, if anything, was said to him before this statement by him that he knew Eaton but he didn't know he was going to break in the tavern and was with him that night, what was said to him in respect to his right to use the telephone, if anything, or what understanding was given to him in respect to that privilege? A. I don't recall, sir.

Q. Did he make any request to use it before that time? A. No, sir. I don't believe he made any direct request to use the telephone when he was first brought to the police station. During the period of time when his personal data was gathered.

Q. Do you recall, you have testified, I believe, to some other warning that you gave him at the rear of the tavern where the beer was being thrown out the window, which you described as the scene of the alleged crime. A. Yes, sir.

Q. You gave him a warning at that spot. Did you give him a formal warning any other time, do you recall? A. I truthfully can't say.

Q. Are you saying you may have or you may not have, you don't (T.63) recall whether you did or not? A. Yes, sir, I really don't recall. I don't specifically advise him of his rights any more after advising him of his rights at the scene. I don't recall discussing the rights with him again.

Q. Did you discuss it with him before that time, before you saw him at the scene? Is that the first time you saw him? A. Yes, sir.

The Court: Are there questions in view of the Court's questions?

Mr. Guth: Yes, your Honor.

CROSS EXAMINATION

By Mr. Guth:

Q. The telephone he used was an extension phone inside the cell block, was it not, inside the cell block? A. He made a telephone call at the jail. Which phone he used I don't know.

Q. Is that the conversation you are referring to? A. No, sir. He also made a phone call in the police station.

Q. Where were you at the time he was making that first phone call? A. I was at the police station.

Q. Where was that phone? A. At the police station?

Q. Yes. A. At the desk.

Q. And you were standing right there as he made the call? A. Yes, sir.

(T.64) Q. Isn't there a pay phone there? A. Not at the police station, no, sir.

Q. How about at the jail? A. Yes, sir, there's a pay phone at the jail. There are two.

Q. And the conversation at the jail you did not hear? A. No, sir. I do know that he was afforded a phone call in the jail but who he called or what the substance of the conversation was I don't know.

Mr. Guth: I have nothing further.

(Examination by Mr. Podolak)

Q. Officer Hawley, what, if anything, was said at the scene when you advised him of his rights; where were you at that time? A. At the rear of the tavern in the patrol vehicle.

Q. What, if anything, did the defendant, Howell, say at that time? A. He was very belligerent in the patrol car, advising me and informing me that I had no right to question the youth, no right to talk to a youth without his parents being there, and I asked him, "Do you know this boy"? He said, "No". "Are you related to him in any way"? He said, "No", and while I was in the process of attempting to advise him of his certain rights, he informed me that I didn't need to go into that, that he knew all about that and he had had two years of law school and he knew all that, but I continued it anyway, explaining that I had to, it was my duty to advise him.

Q. So at the time he interfered while you were talking to (T.65) Eaton? A. Yes, sir. I was talking to Eaton outside the police car and he was shouting these directions to me from inside the police car.

Q. It was at this time you asked him if he knew Eaton and he said no? A. Yes, sir.

Mr. Podolak: All right.

Mr. Guth: And thereafter you said that you were in the process of advising him of his rights that he said you didn't have to tell him all that, that he had been to law school? A. Yes, sir.

Mr. Guth: How many times did you advise him of his rights? A. As I stated, I advised him right at the scene and I don't recall advising him of those rights again. I don't recall discussing them.

Mr. Guth: All right.

The Court: Any further questions, gentlemen?

Mr. Podolak: No, sir.

Mr. Guth: No, sir.

(Further questions propounded by the Court)

Q. These two telephone calls, one made at the police station and one made at the jail, was the police station call made before he made this statement, "Well, I do know Eaton and he was with me but I didn't know he was going to break in the tavern", was the phone call in the police station made before that statement? (T.66) A. No.

Q. After the statement? A. Yes, sir.

Q. That was the call that was made to his wife? A. Well, I assumed it was to his wife.

Q. You overheard part? A. Yes, sir.

Q. When was the one at the jail, was that before the police station call or afterward? A. That was before.

Q. How long before? A. Well, that was made while, during the time that I had taken, after he was taken to the

jail from the scene, from the time I had Eaton at the hospital and had taken Eaton to the police station for processing. It was during that period of time he made a phone call at the jail.

Q. You weren't there? A. No.

Q. You have information? A. Well, we have a record whenever a person makes a phone call they have to sign it and it is retained down there.

Q. Who made that call? A. One of the deputies.

Q. At the jail? A. Yes, sir.

Q. And before he made that statement? (T.67) A. Yes, sir.

Q. Who has knowledge of who he called on that call? Who gave him permission to use the jail phone? A. Clerk White was on duty.

Q. You gather that from the jail records? A. Yes, sir. I don't know. In fact, I am sure that my personal knowledge now of jail procedure, who they did call is not recorded in that record. It is merely dated and by the deputy's initials and they sign for it. Whether this procedure was followed on this, whether this procedure is followed for every phone call made or whether it was followed in this case or not.

The Court: We are going to rule that what the accused said at that time, what he said after that warning was given, about an hour later in response to being confronted with Eaton's statement to the police, is admissible in evidence,

and we will let it stand that the State has made out a prima facie case in accordance with the requirements of Miranda, and we are going to sustain the objection in regard to the statement that the accused made before he was warned of his rights, in reply to, after he was in custody, in reply to an inquiry from a police officer, "Do you know Eaton". What he said in reply to that question we think is inadmissible and we so rule. However, this is only a ruling that you have shown prima facie the voluntariness of the necessary caution in regard to the statement made when he was confronted with Eaton's statement, and you have to prove the voluntary character of that beyond a reasonable doubt in order to have it considered (T.68) by the jury. We will admit it in evidence, the objection to it and we will overrule the objection when it is offered. All of this will have to be gone over again before the jury. Are there any other statements you have in connection with this man's admission to the officer other than these two?

Mr. Podolak: No, sir.

Mr. Guth: I would like to respectfully enter an exception to the Court's ruling as to the portion of the statement which the Court has ruled is admissible.

The Court: You have your objection that you can press on appeal without taking an exception to it, Mr. Guth.

(The jury was brought back into the Court room at this point)

The Court: I don't think it is necessary to have them back in the box. It is now time for noon recess. Just have

them come in the Court room and stand. We have concluded our inquiry on matters that we had to inquire into out of the presence of the jury, but it is now lunch time so we are going to recess for the usual hour from twelve thirty until one thirty, and we would caution you ladies and gentlemen not to discuss the case, or permit anyone to discuss it with you or in your presence. We will recess, Mr. Crier, until one thirty.

(Pursuant to luncheon recess, the Court re-convened at one thirty p.m., the jury was returned to the box, and the trial was resumed)

* * * * * * * *

(T.181) The Court: Now, gentlemen, are there any exceptions to the Court's instructions as given; Mr. Podolak?

Mr. Podolak: Not on behalf of the State, your Honor.

The Court: Any requests for any further instructions?

Mr. Podolak: No, your Honor.

Mr. Guth: If your Honor please, the defendant has no requests for any further instructions.

The Court: You want to dictate your exceptions at the Bench here?

Mr. Guth: Yes, your Honor.

(The following transpired at the Bench out of the hearing of the jury)

Mr. Guth: Your Honor, the defendant would except to the Court's, so much of the Court's instruction to the jury which concluded that the testimony as to the car being present supports Eaton's testimony. The defendant would also except to that portion of the Court's instruction to the jury which concluded that the statement made by the defendant to the police as to knowledge of the accomplice, Eaton, supported Eaton's (T.182) testimony. I would have a further exception as to the portion of the Court's instruction in regard to the explanation of the defendant's rights by the police officers, that these were necessary to make any statement or admission voluntary beyond a reasonable doubt, specifically, it is my belief that the defendant must be given the opportunity to contact a lawyer after his rights to counsel are explained to him, before the interrogation continues. By the way, I would request that the Court give a further instruction to the jury in that matter. And my final exception would be a general exception to the entire charge to the jury, for the record.

The Court: I believe, Mr. Guth, that you would have to point out to the Court the reason for your exception in order for it to be in accordance with the rules, and that you couldn't just generally except to the instructions without assigning reasons, but you, of course, have assigned certain reasons, you have assigned reasons for your others.

Mr. Guth: It is my understanding, your Honor, that a general exception could be made whereby in the event counsel was not aware of a particular part of the charge, it may become a general exception.

The Court: I would just remind you of that in order that you may assign any further reasons, if you wish to, if you have any other reasons.

Mr. Guth: We would have no other reasons than those stated.

The Court: In respect to the exception that the presence (T.183) of the car and the accused at the scene is corroboration of a material fact related by the accomplice's testimony, and the statement of the accused that he knew Eaton and transported him to the scene being evidence which tends to identify the accused with the crime, we believe that the instruction is proper in regard to these matters and we overrule the exception. We will give some further comment in regard to the voluntary character of the admission.

(Counsel returned to their respective places at the trial table and the Court further instructed the jury as follows)

In regard to the warnings that the police are required to give a person whom they have in custody before they can question him, and before the statement that he makes would be voluntary, the Court would like to add to what they have already said, that, in order to make the statement that he uttered to police as a result of questioning voluntary, they must explain his rights to him, as I have related, and give him an opportunity to employ an attorney, if he wishes to employ one, or to secure one at State expense if he is unable to employ one. Now as I recall the undisputed testimony in this case, after these rights were explained by the police, according to their testimony, he was asked whether he understood these rights, and his reply was, in effect, "I am not going to say whether I do or not", and then they asked him the further question, "Do you want to make a statement", and he said, "No". Now if

you believe that he was, (T.184) under all the evidence, and I think there is some evidence that he made a telephone call later on from the jail to his wife, if you believe that he was not given a reasonable opportunity to secure an attorney, then his statement should not be considered as voluntary, and what he said about knowing Eaton and transporting him there should not be considered as part of the evidence. On the other hand, if you find beyond a reasonable doubt that he was given an opportunity to employ counsel or have counsel provided for him, and he did not wish or did not take advantage of that opportunity, then, as far as that point goes, he would have been afforded adequate opportunity to employ counsel or to have the assistance of counsel.

Now Mr. Guth, do you have any further exceptions?

Mr. Guth: No, your Honor. I think that would adequately cover the exception.

CERTIFICATE OF SERVICE

I do hereby certify that I am a member of the Bar of the Supreme Court of the United States, and have this day delivered three (3) copies of this Petition for Writ of Certiorari to the Office of the Attorney General of Maryland, State Law Department, by personally delivering and handing said three (3) copies of the Petition to Honorable Francis B. Burch, the Attorney General of Maryland, 1200 One Charles Center, Baltimore, Maryland, 21201.

This 23 day of June, 1969.

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